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STATE OF NEVADA
DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF FINANCIAL INSTITUTIONS
BEFORE DOUGLAS WALTHER, HEARING OFFICER

In re

NOTICE OF WORKSHOP TO SOLICIT
COMMENTS ON PROPOSED REGULATION
/

TRANSCRIPT OF PROCEEDINGS
SEPTEMBER 9, 2003
CARSON CITY, NEVADA

Reported by: KATHY JACKSON, CSR, RPR
Nevada CCR #402

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1 (WEDNESDAY, SEPTEMBER 9, 2003, CARSON CITY, NEVADA)

2 HEARING OFFICER WALTHER: Good afternoon. My name
3 is Doug Walther, and I am the acting commissioner of Mortgage
4 Lending.

5 Thanks for coming out this afternoon. This is a
6 workshop on potential regulations for the new division of
7 Mortgage Lending.

8 I was going to start out by explaining the purpose
9 of the workshop and what procedure will follow in taking
10 comments so we can keep an orderly record.

11 We have a court reporter here today and she can
12 only take down one person speaking at a time. So the way we
13 will do this is I will go through the list of issues that are
14 on the notice of workshop. I will speak on each one for a
15 little bit, give you my perspective on that issue and then
16 just invite people to come up to the table here and if you
17 could identify yourself and your company and just speak to
18 that particular issue.

19 There is bound to be a little bit of jumping
20 around, but let's try as much as possible to just address the
21 issue at hand and, you know, you can always come back and
22 discuss the issues that are further down on the list when we
23 get there.

24 You probably all got a copy of this letter, summary
25 of AB 490. We will probably be referring to that a little

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1 bit today. I was going to give you a quick update on the
2 status of the division and the, just the plans for
3 establishing it and physically establishing its office and
4 staff.

5 This is an open record. There is no deadline
6 established at this point for comments, so I would encourage
7 everyone to send in letters or written comments regarding the
8 regs. It is my intent to prepare the transcripts of these
9 hearings and present them to the new commissioner along with
10 maybe some recommendations of my own for the adoption of
11 regulations. I think a general time frame for the possible
12 adoption of regulations would be some time in October. You
13 may see a notice with actual regulations being proposed and
14 then some time in November, early December another formal
15 hearing on the adoption of those regulations.

16 This is purely a workshop. We have no proposed
17 regulations on the table. It is just a discussion of ideas,
18 to get your ideas and recommendations on the issues that need
19 to be addressed in the regulations so that I can pass that
20 along to the new commissioner.

21 The Mortgage Lending Division exists on paper at
22 this point. We are going actually a week from today to the
23 Interim Finance Committee to present a budget. Once that
24 budget is approved, we will be able to physically establish
25 the offices, transfer the staff over and begin operating as

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1 an independent agency. We expect that to take place around
2 the first of October for the Carson City office and hopefully
3 shortly thereafter for the Las Vegas office. We have an
4 office location in Carson City. We just need to move in.

5 We have an office picked out in Las Vegas, but we
6 haven't finalized the details of that lease on those
7 arrangements. We have established the staff that are going
8 over to the new division from financial institutions in the
9 north, but the staff in the south is still under discussion
10 but that should be resolved in the next week or two I hope.

11 We are in the process of finalizing a web site for
12 the new division, and I just invite you to continue to check
13 at the financial institution site when that is ready to go
14 public. We will have an announcement on that site and a link
15 to the new site.

16 The new site is going to have much of the same
17 functionality as the old site and a couple of new things. We
18 are working on -- we have just established a new data base
19 for the licensing, the mortgage licensing records, and we are
20 working out a way to put that information on the web site in
21 a more or less live format.

22 At this time the plan is to update the web site
23 twice a day, you know, like lunch and 5:00 o'clock from the
24 actual records that are being worked on as far as, you know,
25 agents and mortgage companies. And it will be a searchable

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1 data base so you will be able to hopefully quickly be able to
2 find what agent or your own company that you are looking for.
3 That should be or at least a version of that should be up
4 when we get the web site unveiled and that is hopefully going
5 to be within a week or two.

6 And on that issue, any time you convert data over
7 from one system to another, there is bound to be some bugs
8 and errors. I would invite everyone when that is up and
9 running to look at your own record and let us know if any
10 corrections need to be made to that information.

11 Another thing about the web site, we are going to
12 try to make it a little more interactive. There is going to
13 be an interactive consumer complaint form on the web site.
14 There is going to be some kind of a form to -- for brokers to
15 indicate their agreement to communicate with the division via
16 e-mail. There was a law passed, I forget the bill number,
17 just last session that allows agencies to deal with really
18 anyone, their constituents or industry or the public via
19 e-mail if that person agrees to that means of communication.

20 And we are going to try to promote that at the
21 division so that, you know, formal notices of renewal and
22 things like that can be sent via e-mail, that if we get a
23 significant number that participate in that, you know, we can
24 save postage and paper and so on. And since this is a
25 self-funding agency, any cost that we can save in its

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1 operation are going to be beneficial to you as an industry.
2 So that will be up on the site and information on how to sign
3 up for that.

4 So that's the summary of where we are at with the
5 new division. I went through AB 490 and the summary letter
6 and just made a list of the issues that I saw that we should
7 address or we needed to address as a result of the bill, some
8 of them are housekeeping in nature. You know, we need
9 regulations to establish the CPA assessment and the
10 examination rate just because we are a new agency, and we
11 can't rely on financial institution regulations anymore. We
12 have to have our own. I didn't mean to scare anyone in
13 regard to those fee issues. For the most part there really
14 isn't any intent to increase those fees at this point, just
15 that we need to have a regulation that is similar to the old
16 regulation.

17 But anyway let me just go down the list and I will
18 start the discussion and hand it over to you. The first
19 issue, if this is any way like the southern meeting, this is
20 going to provoke a lot of discussion and that's the education
21 providers, the process of approval of providers of continuing
22 education for mortgage brokers and mortgage agents.

23 This generated a lot of discussion in the south and
24 the way I prefaced the issue is that we have a very limited
25 authority in this new law regarding approval of providers.

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1 It was the administration's desire to open up education
2 beyond the approval process that exists today. But we didn't
3 -- you know, we didn't have a lot of time to come up with an
4 elaborate mechanism to do that so I think there is really
5 only one sentence in the whole bill that says something to
6 the effect that the commissioner can provide -- can approve
7 through regulation providers of education of continuing
8 education.

9 That raises the issue of just what is the extent of
10 our authority in this area as an agency? And I heard all
11 sorts of opinions from, you know, we want to kind of
12 duplicate what the real estate division does to, you know, we
13 need to keep it very simple and just adopt the regulation
14 that, you know, has a simple list of so and so can provide an
15 education and that's it.

16 If I had to kind of weigh the comments, I would say
17 the general leaning of everyone was that they wanted it to be
18 more elaborate. They wanted the state to be more involved in
19 the approval process and the setting of standards for courses
20 and education. That is going to just be an open question,
21 and we may need to consult legal counsel as far as whether
22 the bill goes to this authority to do all of the things that
23 people said they would like us to do.

24 I think at a minimum what I would like to see done,
25 assuming the statutory authority to do so, would be to set

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1 some standards as far as subject matter, appropriate subject
2 matter to be covered in education and maybe even some
3 mandatory subject matter. I think most professional
4 licensing has mandatory law and ethics, and I think law and
5 ethics ought to be a minimum requirement for this industry as
6 well. Law is just a common sense, that's what is going to be
7 examined, that's what we are here to enforce and there should
8 be education on what the law is and what it means.

9 Ethics a little more slippery but, you know, there
10 is a lot of laws in the state beyond even our agency that
11 deal with ethical issues and consumer protection issues that
12 ought to be taught to the people out there doing the work.
13 Beyond that, I think that we can probably approve in the
14 regulation some established course providers. It has been
15 suggested the public university and community college system
16 should be automatically approved provided the course that
17 they provide falls within the subject matter that we -- that
18 we designate in the regulation.

19 There was some discussion about real estate
20 courses. I think to some extent there is some overlap. I
21 think there is probably real estate courses approved for real
22 estate, continuing education that deal with finance that may
23 be appropriate and beneficial to this industry, and it would
24 be a matter of us trying to identify what subject matter and
25 what the appropriate providers are of that education. But

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1 the suggestion was that if we can agree on a standard for
2 approval of the appropriate overlap type of courses that we
3 would just kind of piggy back on any kind of real estate
4 commission approval of that course or course provider.

5 And then finally there is some discussion that I
6 have some question about whether we have authority to do this
7 given the bill is to just kind of have an open ended
8 procedure where we approve course providers on an ad hoc
9 basis. You know, either a temporary provider or temporary
10 seminar coming into the state could submit an application to
11 get that course approved or any other kind of, you know,
12 isolated type of situation. I have some doubts whether legal
13 counsel will say that the statute allows us to be that open
14 ended about it.

15 But that's basically the summary of the comments
16 from the south and my thoughts on it. I think generally it
17 is a balancing act between something cost effective and
18 simple that gets the job done and something more elaborate
19 like the real estate division. And I think everyone should
20 be aware the more elaborate we get, the more expensive it
21 gets.

22 The real estate has an education staff. They have
23 more licensees and more courses, but I think if we get into a
24 situation where we are going to have to -- we are going to
25 have to regularly review curriculums and get into some kind

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1 of an audit procedure or checking procedure that we are
2 probably going to have to add staff to do that. Right now
3 the plan is to whatever education approval process we adopt
4 is probably going to fall on the commissioner with some help
5 from, you know, whatever staff is available to do that.

6 So with that, I will invite anyone to come forward
7 and speak on the topic of approving education providers. And
8 if you could -- well, maybe do you think we are in a small
9 enough room we can just let people talk from where they are.

10 COURT REPORTER: Uh-huh.

11 HEARING OFFICER WALTHER: All right. Go ahead.

12 MR. SNYDER: My name is Wayne Snyder. I am with Z
13 Loan Investment up at Lake Tahoe. I want to make this
14 comment, we are a fairly new company and by now we have
15 planned on going into California and setting up an office in
16 a couple of different areas. When we went to California and
17 met with the department of real estate, who acts as a
18 financial institution division here in Nevada, we were told
19 that to loan money there you had to be real estate licensed
20 and we must have a real estate broker in charge of our
21 company.

22 So I want to go on record right now that if we are
23 looking to take these kind of courses and head down that
24 path, we, my company and I are very opposed to that. I am
25 not opposed to anything to do with banking law, law in

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1 lending and things of that nature but anything related to
2 real estate activity, we don't understand it. We don't get
3 why we have to be regulated. I just wanted to say that.

4 HEARING OFFICER WALTHER: Well, just so you
5 understand it, we are not proposing any kind of additional
6 regulation in the real estate area. We are talking about
7 approving courses that real estate licensees in this state
8 would be approved for credit for that may overlap and benefit
9 both industries.

10 MR. SNYDER: I heard what you said but someone else
11 is going to hear what you said and what I said, and I want to
12 at least be known that I think going down another path would
13 be terrible. I did not hear you say that. You are right.

14 HEARING OFFICER WALTHER: Any other comments?

15 MS. BEACH: To clarify, I have been a real estate
16 agent for 11 years and -- Leslie Beach, with Beach Mortgage.
17 I am out in Fallon, Nevada.

18 The courses that real estate agents take do not
19 correlate very much with the lending courses that I have
20 taken so far. I agree 100 percent that we should have law
21 and ethics and several beneficial courses available. I would
22 love to have a list. I don't know about everybody else, but
23 I have been on the internet looking for who is qualified. I
24 have called the state and asked them for the list of who is
25 qualified to take courses from. It is confusion, there is no

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1 doubt.

2 And when -- when that law was passed that we needed
3 the continuing education, you know, it has been kind of like
4 by the seat of your pants which is totally understandable.
5 But unless the regulation is better than more as you, well,
6 you have always said but it just would be nice to have a
7 source or a list to go to, you know, less the ease.

8 HEARING OFFICER WALTHER: Well, we are going to try
9 to be more proactive in that regard because we are going to
10 be more involved in the approval process. So unlike the
11 current situation, we should have our own list of providers
12 and possibly specific courses. So that information I would
13 say eventually will be on our web site, and that was one of
14 our intents in making this change to the law was responding
15 to some comments that we had regarding the existing law about
16 confusion and difficulty and getting that education.

17 Anyone else? If you are going to speak from where
18 you are, I am just going to have to call on you. Against the
19 wall, back there.

20 MR. GIUSTI: I am Michael Giusti. I have been in
21 the education committee for Mortgage Bankers Association and
22 mortgage brokers for the last four years and mortgage bankers
23 for the last eight years.

24 The issues that I would like to address are some of
25 the things with respect to cost and availability. I also

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1 brought a couple of things that I think the commission might
2 consider as part of this because I also have classes approved
3 by the Nevada Board of Continuing Legal Education. The
4 reason that us education providers try to have our classes
5 approved by more than one facet is because those people are
6 taking our classes. I have attorneys take my classes and so
7 they requested that I have my classes approved by the Nevada
8 Board of Continuing Legal Education. They approved my
9 classes for free.

10 They took the credentials that I have from the real
11 estate commission, and the real estate commission only
12 charges me \$50 to have a class approved as an outside
13 education provider. So some of the forms in some of that
14 stuff are -- have been invented, and I don't believe that the
15 commission spends a substantial amount of time reinventing
16 the wheel. They should look at successful steps, and emulate
17 or take the best of each one of those.

18 So I would like to speak to the issues of the cost
19 and the availability because I believe that the scope should
20 be substantially increased. With respect to the real estate
21 commission does not allow agents to take a computer class
22 because they do not believe that that is something that is
23 within the scope that the real estate commission would
24 consider bettering the agents' abilities.

25 Us as lenders have to submit our loans through

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1 Fanny May and Freddy Mac directly on the computer so I think
2 that some classes that are relative to our industry should be
3 considered along those lines.

4 Additionally, I believe like the class in fire
5 insurance may not be considered appropriate by the
6 commissioner until they have a look at the fact that we have
7 to quote fire insurance rates and all of that on our good
8 faith estimates. So I believe that we should make the cost
9 attractive for education providers so that there are good
10 people out there giving classes. We should make the scope
11 and availability of those things where I have been in the
12 industry 15 years. I have never taken a fire insurance
13 class. It would be nice for me to have some classes that are
14 fresh, that also impact or effect my businesses.

15 So I believe that those are my specific issues, and
16 I brought some information with respect to the Nevada Board
17 of Continuing Legal Education requirements, their forms and
18 those sort of things so that the commission could emulate the
19 successful parts of that.

20 Now, I have taught probably one-third or one half
21 of the classes for the mortgage brokers up here in northern
22 Nevada since 1999, and the other person who has taught the
23 other half of the classes is sitting right here as well. So
24 we have a little bit of background in that because we do try
25 to do education, and I have only tried to do education for

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1 either or both of those committees. I won't sit in the
2 chairs. I won't do anything else because my primary focus is
3 to make sure that the student comes away with something and
4 good quality and that is my only intent and comments. So I
5 will leave you a little bit of the information that may help
6 the commissioner decide and establish a set of guidelines.

7 HEARING OFFICER WALTHER: All right. Thank you.
8 As you can probably tell from my initial comments, we intend
9 to emulate or at least examine existing processes of other
10 agencies for continuing education.

11 I don't think we are, at least initially, going to
12 be very expensive. I am sure we are going to be free because
13 there is no authority at all in the statute for us to charge
14 in any way for the approval process. It is just blank
15 authority to approve providers. It doesn't say anything
16 about fees. Although, if we go down the road of having a
17 more elaborate, you know, course by course approval system
18 with allotting guidelines and so on, you know, I think we are
19 going to need one person and we will need to recover that
20 cost.

21 Any other -- any other comments on education
22 providers?

23 MR. ROYCE: John Royce with Capital in Reno. I
24 would like to suggest maybe you look at how California does
25 their continuing ed. Many of us on the border here are

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1 licensed in both Nevada and California to the extent that the
2 courses that are approved in California for people that are
3 mortgage brokers or real estate brokers, licenses or sales
4 agents licenses in California. If their courses are mortgage
5 related, I would like to see them perhaps automatically be
6 approved because it is cumbersome to have to take the
7 continuing ed. for two different states when we are in the
8 same.

9 HEARING OFFICER WALTHER: All right. I am a
10 licensed lawyer as well, and I have been to plenty of
11 continuing legal education courses where other professionals
12 were attending, accountants come to mind. I think there were
13 others, but I know there is overlap, and I am not suggesting
14 a huge overlap. But to the extent we have the ability to
15 examine the subject matter and the courses and providers and
16 determine that it is appropriate for the industry, it
17 certainly furthers the idea of greater availability of
18 courses. And if you can overlap courses, I think you
19 guarantee a larger audience and maybe you encourage better
20 providers to come in and provide those classes.

21 Anything else on the education approval process?
22 Yeah.

23 MS. POWELL: I am Tanya Paul with Into Homes
24 Mortgage Services and to speak to Leslie about having a
25 little more structure and less confusion. I worked a lot

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1 along with Tom and a gentleman down south named Leo
2 Davenport, I don't know if he was at your hearing last week,
3 regarding the education requirements and watching this bill.

4 And I am on the board for TMCC and in speaking with
5 Leo and talking with the president of TMCC and the person who
6 heads up their professional education division, they are very
7 interested in being a provider of continuous classes and
8 providing some structure to the program so that they can be
9 kind of a clearing house for those that can teach the
10 classes. They would be willing to provide schedules, classes
11 at a very reasonable cost, less than if -- less than a
12 mortgage broker. If you are taking classes through the
13 Nevada Associate of Mortgage Brokers, less than that cost and
14 do them consistently so that people wouldn't have to be
15 constantly searching for classes, where are they, what are
16 they, that kind of thing. They are willing to be a partner
17 in this in providing the classes.

18 HEARING OFFICER WALTHER: It is not something that
19 I plan to undertake, but I think the new commissioner will be
20 at some point in making those calls and having those meetings
21 with the public education providers. If you have
22 information, contact information that I could pass along, I
23 would be happy to receive that.

24 MS. POWELL: Sure.

25 HEARING OFFICER WALTHER: Any other comments on the

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1 first issue of approval of providers of continuing education?

2 All right. We will move to the next issue, process
3 by which the division will approve continuing education
4 credit for mortgage brokers and mortgage agents. I don't --
5 I think this is more of a housekeeping type of item. I am
6 not sure exactly how it works right now. I imagine it is a
7 paperwork process if you send in some evidence that you have
8 taken a course.

9 I don't have much to say on that except that I
10 would eventually like to get to where if we are dealing with
11 providers that that can give us lists and can keep that
12 information, and we can trust them that the information is
13 accurate, that we can eventually get to where we will accept
14 their list of people that have taken the class. And then we
15 can -- we can enter that into the record and that would be
16 all of the proof they would need, and we will just have that
17 education entered in our licensing records and, you know, we
18 will use it the next time they need it to renew and that
19 would probably be in addition to whatever, you know,
20 individual proof of completion of course that exists now.

21 Anyone have any comments on the way we actually
22 approve individual credit or licensees for education? Yeah.

23 MR. GIUSTI: Mike Giusti. I just wanted to, many
24 of the things that we see required, 90 percent attendance or
25 something like that, so those are some things that I was

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1 hoping that we would emulate that there would be some set
2 structure that they would have to attend some minimum amount
3 of the class in order to receive the credits. That was my
4 only comment.

5 HEARING OFFICER WALTHER: Do you think that should
6 bbe in the regulation that --

7 MR. GIUSTI: Well, it is kind of hard to separate
8 between one and two here because, you know, there is really,
9 you cut the baby in half so to speak. But with the forms and
10 that and the requirements of other agencies, if we can
11 emulate those like the other comments have said if it is the
12 same stuff we are used to as a real estate broker or a
13 California realator or as California lender or something like
14 that, if the more consistency we have within our ability,
15 then the better it is for our students.

16 But there should be some minimum attendance whereby
17 they have to take that because I have heard that there is a
18 five hour class on the internet where if somebody who has
19 experience in the business can whiz through the thing in
20 about an hour, and I am not really happy with the fact that I
21 have to sit there for five hours while somebody else only has
22 to sit there for an hour.

23 HEARING OFFICER WALTHER: I understand. And any
24 other comments on that issue?

25 All right. We will move on to the third issue, the

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1 process by which the commissioner of Mortgage Lending may
2 approve the carry over of hours of continuing education from
3 one year to the next. I know that most -- most systems have
4 some kind of carry over provision, I know the state bar does.
5 And one person provided a written comment that just said
6 simply accept any credit taken within the previous 24 months
7 of renewal date or the date that you need the credit and
8 subtract any credit that you previously used to renew or
9 obtain a license. That seems simple enough to me.

10 That was clearly the intent to allow people to take
11 courses or give them an incentive to take courses that maybe
12 go over the minimum. We know there is going to be a certain
13 percentage of people taking this education that is doing it
14 only because they are required and to fulfill that
15 requirement, but others like to encourage others to take it
16 just to better themselves and to give them an incentive or
17 give them some benefit from that and to allow reasonable
18 carry over, and a one year carry over seems reasonable. It
19 is still likely to have been providing some benefit to that
20 person.

21 Anyone have any comment on the issue of carry over
22 of education credit hours?

23 All right. We will move to the next issue, that
24 the transition from a registration requirement from mortgage
25 agents to a full licensing requirement by July 1st, 2004,

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1 including the license application and approval process
2 beginning October 1st, 2003, the pro-ration of fees for
3 licenses effective less than one year.

4 To some extent this issue already has been decided
5 by necessity. We have agent renewals coming up October 1st
6 and basically had to make some decisions on how we were going
7 to transition from registering agents to licensing agents,
8 and we will have greater detail on this coming out in the
9 renewal letters, but I will just tell you how it is going to
10 work now in concept.

11 We are going to pro-rate both fees if an agent
12 renews their registration and applies for a license at the
13 same time. So what that would mean is that an agent renewing
14 a registration after October 1st will basically be charged
15 the fee, the annual renewal fee from that date to July 1st of
16 2004, whatever that -- whatever that amount to be plus a
17 pro-rated portion of the license, agent license application
18 fee which is similarly pro-rated based on the number of
19 months that license will be effective. And then the license
20 renewal date will be -- will end up being roughly the same as
21 the registration renewal date.

22 Now, the reason this period from October through
23 June was put in the law was at our request to first give us
24 enough time to get this program running, up and running but
25 also to hopefully encourage people to come in early during

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1 that period and to stagger the license applications and
2 approval process through that period so we would have a
3 staggered renewal system for the agents getting licensed.

4 And the letter that will go out will have a
5 schedule of fees. We just figured it out based on, you know,
6 the month that your renewal, your registration renewal comes
7 due. The license application fee, the initial one I think is
8 \$185, that fee will be pro-rated based on the number of
9 months it is in effect until its renewal date, and then the
10 125 registration fee will also be pro-rated and the two
11 combined to come up with that fee to renew and to apply for
12 the license.

13 And just to review the law, and this generated
14 discussion in the south, and I am not really sure I
15 understand why, but the law says that the licensing
16 obligation or requirement starts on July 1st, but you can
17 obtain a license prior to July 1st. It won't become
18 effective until July 1st.

19 I think the clear intent of all of that was to
20 encourage people to apply to get the license by July 1st
21 within that October 1st to July 1st time frame and then have
22 the license expire a year after -- roughly a year after it is
23 applied for. So if you apply in November, your agent's
24 license is going to expire at the end of October. It is
25 going to be in effect for just a small part of that year and

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1 the fee that you will pay for that license will be pro-rated
2 accordingly.

3 I guess that is all I had on that issue. Does
4 anyone have any comments or questions or did I misstate
5 anything? In the back.

6 The fee is going to be set up so you are paying for
7 both the registration and license for exactly the number of
8 months that it is effective, that's the basic idea. But the
9 letter will have an actual schedule so if your agents are
10 renewing in November, you know, you will know exactly what
11 that fee is going to be.

12 One thing I should add, we really can't require
13 anyone to do this, you know, there is no -- an agent may need
14 to renew a registration in November and has plans to leave
15 the industry or business by July 1st, and we can't force
16 anyone to apply for a mortgage agent's license. But the
17 policy is going to be that if you don't take advantage of
18 this opportunity to do them both at once, we are going to
19 charge the full renewal fee for your registration and then
20 when you do come in and apply, assuming you do, for an
21 agent's license, we are going to charge the full licensing
22 fee.

23 So we are definitely trying to create the incentive
24 to keep this as seamless as possible and just get your
25 agent's license when your registration renews in that time

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1 period. And if it renews outside that time period, there
2 really shouldn't be an issue.

3 Any other comments on that?

4 All right. I will move to the next issue which is
5 licensing by January 1, 2004, of mortgage bankers formerly
6 exempt from licensing pursuant to NRS 645B.015 subsection six
7 or 645E.150 subsection six, including the possible issuance
8 of provisional licenses should application processing not be
9 completed by that date.

10 If you followed the discussion of AB 490 in the
11 legislature, you know the repeal of these so-called category
12 six exemptions took place in the last couple of days of the
13 session and really was finalized probably in the last hours
14 of the session and actually was a real sticking point for the
15 administration in considering whether to sign the bill.

16 As a result of that at least from my standpoint,
17 the issue wasn't as explored as fully as it should have been,
18 and so we don't have the refinement in how the issue is going
19 to be addressed that we might have had had it been discussed
20 in, you know, more fully during the regular session. As it
21 is, the bill just deleted the exemption. It had -- it has
22 one paragraph in there about transitional language as far as,
23 you know, when people hold those exemptions and continue to
24 operate under them but not much more else.

25 It basically says that if you got one of those

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1 exemptions, they are effective through the end of this year
2 and it also says that, well, I guess the implication is that
3 the licensing requirement to the extent it applies takes
4 effect January 1st, 2004.

5 The mention of provisional licenses I think is just
6 a recognition of the practical realities of starting a new
7 agency at this point. It exists on paper at this point and
8 judging by the numbers and making some assumptions about the
9 percentage of the current -- of the companies that are
10 currently designated as exemptions under those two
11 subsections coming forward to get licensing would mean that
12 we are going to get by relative term an avalanche of
13 applications for brokers or bankers licenses by the end of
14 the year. And we are just not going to physically be able to
15 issue that many licenses.

16 So the current thinking or my recommendation to the
17 new commissioner will be to allow some kind of provisional
18 license, either adopt a regulation or a policy that says if
19 you file a completed application by January 1st, you can
20 either continue to operate under the receipt given for the
21 application fee for that license pending further review and
22 investigation or perhaps the actual issuance of a license
23 that is conditioned on the complete review of the application
24 because we are just not going to be able to do those
25 background checks and review by that date. When I say

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1 provisional, I really mean only in the sense that it would be
2 subject to conditions that we would need to wait longer for,
3 like background checks.

4 There are certain applications criteria or
5 licensing criteria that we can examine just by looking at the
6 application, and I am going to recommend that all those
7 decisions regarding licensing to the extent we can take place
8 before January 1st. So if someone is clearly ineligible for
9 the licensing, we will just simply tell them that and deny
10 the application.

11 There was quite a bit of discussion and I imagine
12 there will continue to be discussion about the effect of the
13 appeal of these categories of exemption, and I would just
14 point out my understanding, I haven't seen it practiced, but
15 I have heard that because it is so easy to get an exemption
16 that a lot of companies or some companies anyway become
17 exempt under these provisions just out of an excess of
18 caution when they may not even need to do it.

19 It may be they are doing an isolated loan
20 transaction which might be authorized under NRS 80.015 which
21 is the doing business in Nevada statute that contains some
22 limited authority to do isolated loans in the state. It may
23 be that the nature of their business is more in the wholesale
24 market that is not subject to licensing and remind people
25 that there is a regulation. I don't have the citation at

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26

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1 hand, but there is a regulation that attempts to define the
2 wholesale lender for that purpose. So the first issue,
3 anyone that is exempt under these categories now would be to
4 determine whether they need a license at all.

5 It has also been suggested that companies that are
6 exempt under category six might qualify for exemption under
7 other categories of either of those sections of the NRS. I
8 can agree with that to the extent that those companies can
9 come forward and prove that they are qualified under other
10 exemptions, but they are going to have to do that. But it is
11 -- that is a necessary first step in the analysis is what is
12 the nature of my business and how does that fit within the
13 definition of mortgage broker or mortgage banker?

14 I have been getting not at a flood but pretty
15 regular stream of calls from companies that have these
16 exemptions now, and they are asking those types of questions,
17 and that's what I am telling them, this is the kind of
18 process you need to go through to determine your own
19 situation and one is just, you know, examine your business
20 practices and your contacts with Nevada and determine whether
21 you need licenses.

22 The next question that comes up is if we get past
23 that in the discussion and they conclude that they are going
24 to need some type of license is what type of license do they
25 need? And there is quite a bit of discussion, I think they

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27

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1 will continue to be as to the relationship between the
2 licensing authority granted by AB or not AB but NRS 645B and
3 645E.

4 645E I believe came into existence when AB 64 was
5 passed two sessions ago, and it is our interpretation of in
6 general of those two statutes that 645E, licensing scope is
7 in a sense a subset of 645B, and that is based on the literal
8 language of the statute as well as the legislative history
9 which was to at the time AB 64 was being debated in the
10 legislature was presented as an alternative to the more, the
11 more intensive regulatory provisions of AB 64 because this
12 group of people felt that their business was sufficiently
13 different from a traditional mortgage broker or businesses
14 doing private money pool type of loans to warrant a different
15 type of regulation, so it was carved out in a sense.

16 This issue comes to -- this comes up to companies
17 or exempt under category six under either chapter because it
18 is one that they didn't really have to consider as carefully
19 as they do when they consider licensing. It is consequences
20 of choosing the wrong chapter in licensing. If you are
21 exempt, if you have an exemption under either statute, it is
22 good for both laws I believe or it is good for the authority
23 granted by that exemption.

24 But I am having a lot of exempt companies ask me
25 that same question, what chapter do I get licensed under and,

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28

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1 you know, that's what I am telling them, examine your
2 activity. Look at the definitions in 645B and 645E and
3 understand that from our viewpoint, 645E is the more limited
4 scope of authority and if you want to go beyond that
5 definition and broker loans or broker the types of loans that
6 aren't authorized in 645E, then you need to get a brokers
7 license. And if you get a brokers license under 645E, you
8 are covered. You can do it all at that point. And as I
9 said, there is some debate whether that is incorrect
10 interpretation, but that's the current practice of the
11 division.

12 The other issue relating to having companies that
13 whose exemptions will be expiring at the end of year come
14 forward for licensing is the issue of their agents. I think
15 there will be a percentage of them that come forward for
16 licensing that are going to need a brokers license, and they
17 are going to need to license their agents come July 1st.

18 Technically you could read the law as requiring
19 registration in that interim period, that six month period.
20 We looked at that and said that didn't make any sense. It is
21 a -- it is being phased out in favor of licensing, so we have
22 just made the policy decision to not bother with registration
23 at all for companies that are coming in and licensing for a
24 mortgage broker before the end of this year. We will simply
25 require them to apply for and obtain a license for their

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29

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1 agents by July 1st.

2 That's all I had on that issue. I would invite any
3 comment on the repeal of the exemption, category six
4 exemption and the transition to licensing any companies as a
5 result of that repeal. Anyone have any comments?

6 Cathie?

7 MS. JACKSON: Cathie Jackson from Mortgage Options.
8 I kind of paid attention a lot when the bill was going
9 through and if people look at the definition of a mortgage
10 banker under the statute for 490, basically it says that a
11 mortgage banker only lends their own money. So anybody that
12 brokers a loan might as well go for a 645B license.

13 HEARING OFFICER WALTHER: It is a little broader in
14 the definition of your own money includes things that some
15 could argue marsh your own money, but it is considered your
16 own capital, but I agree and that's why I stated in that kind
17 of black and white term in the AB 490 summary. You know,
18 there is no little bit of brokering. I have gotten that a
19 lot that, you know, we mostly make our own loans but
20 occasionally we do a little bit of brokering. And so, well,
21 you are going to have to decide not to do that little bit of
22 brokering or get the appropriate licensing. There is no
23 exception for a little bit.

24 In the corner.

25 MR. HARDIAC: My name is Bob Hardiac (phonetic)

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30

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1 with High Sierra Mortgage. What kind of enforcement or
2 policing is the new branch of the mortgage lending division
3 is going to police the mortgage brokers? Are now mortgage
4 brokers under the new 490 rule is going to have to obtain a
5 brokers license to be able to broker out, what kind of
6 policing or enforcement is in place to make sure that they
7 are complying with the law?

8 HEARING OFFICER WALTHER: Well, we have done the
9 first step I think which is to notify people what the law is
10 and we have invited people to inquire about what is required
11 of them. I have talked to people that have called me and we
12 have procedures in place in our department of regulations for
13 these companies if they have a question about the
14 applicability of this law to them that they can just simply
15 write a letter and describe their activity and we will issue
16 a letter in return and make a ruling on that issue for them.

17 I think at a minimum we will probably send a letter
18 out reminding people once again as we get closer to the
19 deadline and then perhaps after the deadline a letter
20 informing them that their exemption is no longer valid. And
21 I think after that, it is going to be a matter of just being
22 out in the field and discovering activity that is taking
23 place and then we will treat it like any other unlicensed
24 activity case.

25 Do you want to follow-up?

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31

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1 MR. HARDIAC: One little follow-up, this would also
2 carry over to licensed real estate agents who are originating
3 loans without any kind of licensing whatsoever? What is the
4 protocol on enforcing that non licensing that is taking
5 place? I know of several agents out there throughout the
6 state who are originating loans and openly and they have an
7 agreement with the wholesale lender and they have no
8 licensing whatever so. What is the protocol of turning those
9 people in and enforcing that they have to get licensed or
10 they cease and desist?

11 HEARING OFFICER WALTHER: As far as I know, the
12 protocol is like any other type of violation. If we get
13 information or a complaint relating to it, we will
14 investigate and make a determination and take action if
15 warranted by the facts. So if people are aware of unlicensed
16 activity, they should report it to the division so it can be
17 investigated.

18 MR. HARDIAC: Well, what I am afraid of, sorry,
19 just to finish up. What I am afraid of is what happened,
20 what I have seen happen over the last couple of years with
21 the license, the real estate licensees that are doing this
22 blatantly. They get a cease and desist letter from whatever
23 governmental agency and they go right on doing it under the
24 table and there is no teeth behind this new law. And I am
25 afraid that what is happening with the realators or the real

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32

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1 estate agents, I shouldn't say realators, but the real estate
2 agents who believe that they can make a few extra bucks by
3 wholesaling and not getting licensed, I think the same exact
4 thing is going to happen to mortgage bankers who are now
5 facing the same legislation.

6 My biggest concern is that if you are going to have
7 these laws, I would like to see some kind of mechanism here
8 to enforce them and put, force these people to get licensed
9 or get out of the business.

10 HEARING OFFICER WALTHER: Well, given the scope of
11 the responsibility of the staff and the division, I think it
12 is reasonable to expect the first response to a situation
13 like that is a cease and desist order in a form of a letter
14 going out which in effect gives the person the benefit of the
15 doubt that they may have misunderstood.

16 Certainly after that, there is no argument that
17 they misunderstood the law and if evidence of it continues,
18 there are very stiff penalties in the law. But as far as
19 responding to specifically to how you would go about
20 enforcing it, the provisions are already in the law as far as
21 what the penalties are. It is a matter of staff resources
22 and legal resources available to the division to take that
23 action considering that we have limited staff and those staff
24 are, you know, pretty much working full-time doing
25 examinations and other types of duties.

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33

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1 MR. HARDIAC: My thought on that is is there any
2 way of going to the wholesale lender who is working with this
3 unlicensed individual and say look at, are you aware that you
4 are working with an unlicensed individual. Maybe if the
5 state goes to the source and says you better stop working
6 with this person until they are properly licensed because it
7 is out there. I see it. I know it is going on.

8 HEARING OFFICER WALTHER: Well, I think if we had
9 that information, a cease and desist order is a public
10 document. I could see why it would be appropriate to copy
11 that to someone else who may be unwittingly assisting in that
12 activity.

13 And I don't know if you all are aware, but there
14 has been efforts in the past sessions to amend the escrow law
15 to require some kind of proof of licensing for loans to close
16 in the state. I believe that was done only with regard to
17 645A which is the Independent Escrow Act and was not the
18 trust company act, 692A was not amended in a similar fashion,
19 so that law is of limited effect. But that is an issue that
20 could be debated in future legislative sessions, and I think
21 it is seen as a very effective way to cut down on unlicensed
22 activity because if that proof has to be shown in order to
23 close a loan then, you know, that is going to throw a wrench
24 into unlicensed activity in that transaction.

25 Any other comments on that?

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34

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1 MR. POWELL: I do have another question. I do
2 agree that if you -- Tom Powell with Into Homes Mortgage
3 Services. If you allow the wholesalers to know what the
4 regulation is and what your expectation is, I think many of
5 them will become sub policing them for requiring that they
6 have their license. And we found out that most of the
7 reputable wholesalers that we do business with require the
8 license. So I think that is, you know, it is another catch
9 that can be in there.

10 More specifically just for clarification, if you
11 have a large company, let's say a Wells Fargo Bank that is a
12 mortgage banker and they have one agent that brokers a loan,
13 is that going to require or they have one agent that want to
14 become able to broker a loan, is that going to require all of
15 Wells Fargo to operate underneath 645E or is that one agent
16 going to be able to get licensed?

17 HEARING OFFICER WALTHER: I am not sure I
18 understand your question, Wells Fargo?

19 MR. POWELL: A mortgage banker, mortgage bank side,
20 they are going to lend all their own money, but they have one
21 loan officer out there that says, hey, I want to broker a
22 loan to Green Point, which is, and they already do that now,
23 and that's why we pushed for this regulation is that we had
24 many mortgage bankers that were doing a little bit of
25 brokering or a lot of brokering and operating especially in

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35

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1 the branches that were operating under the guise of, hey, I
2 am a mortgage banker and they hardly ever close a loan in
3 their name, in their own name. And so is that going to
4 encompass the whole company falling underneath?

5 HEARING OFFICER WALTHER: I don't know if I can
6 specifically respond to that. I think if there was evidence
7 of a pattern that the banker was actively involved in that
8 activity or condoned it, that would be one thing. If it was
9 an agent acting on his or her own, that would be another
10 thing. But it, as I said before, there is no little bit of
11 exception. So if it was discovered and we had evidence of
12 it, we would respond.

13 MR. POWELL: Are the big mortgage bankers, you
14 know, you are going to mail it out to the local branches, are
15 the big bankers going to know this, especially in the big
16 branches as well, if that is and there is no little bit of
17 brokering. It is either they do it. If they do it once,
18 they have to get the right license.

19 HEARING OFFICER WALTHER: Well, you know, our
20 mailing list is those that are exempt or licensed now so we
21 are not sending out letters to companies that we are not
22 aware of.

23 MR. POWELL: Right.

24 HEARING OFFICER WALTHER: Or aren't, you know,
25 under our jurisdiction, so I don't know how they would if

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36

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1 they are not within those categories, I don't know how we
2 would be able to specifically notify them except through our
3 web site or generally.

4 MR. POWELL: I have to clarify it again. If you
5 have one agent in their office that is brokering or wants to
6 broker, that requires the entire company to get the proper
7 license; correct?

8 HEARING OFFICER WALTHER: Yeah.

9 MR. POWELL: Okay.

10 HEARING OFFICER WALTHER: If that agent is working
11 on behalf of that company, it is the company doing it.

12 MR. PETERSON: Yeah, Don Peterson Academy of
13 Mortgage. Under the old system, you have the mortgage
14 company exempt and you have the mortgage broker exempt and a
15 couple years ago, they changed it. It used to be just
16 mortgage company exempt. If you were going to broker loans,
17 you had to get the mortgages broker exempt license, so I have
18 to assume that is going to continue. One loan should cause
19 you to get that other license.

20 MR. MALLARD: Dwight Mallard, Platinum 1st
21 Mortgage, that is going to require everyone to get licensed,
22 you know, everybody, because, you know, we fall under the
23 exemption right now. And, you know, there is a point in time
24 throughout the year somebody has to broker a loan so that,
25 you know, that is going to require everybody. I mean, I

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37

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1 can't imagine one company not falling under having to get
2 that.

3 MR. PETERSON: Well, you might not want to. You
4 may just give up brokering.

5 MR. MALLARD: Another question is I actually am
6 under ABA. Wells Fargo is out there doing it left and right.
7 We have to police that industry as well because it is
8 another, whole other animal out there. So by HUD when you do
9 an affiliated business arrangement, you have to broker,
10 that's HUD requirement. So, I mean, I don't see any way of
11 getting around this exemption personally.

12 MR. PETERSON: Our standpoint and, Cathie, you were
13 involved in that, we don't feel that there should be a way
14 around it.

15 MR. POWELL: Tom Powell, I don't feel there should
16 be a way specifically around it. It is that if the mortgage
17 banker brokers, then you should have the same license
18 requirement.

19 MR. MALLARD: I am going to agree, but I don't see
20 that there is black or white here. I don't see a letter
21 going out that you are exempt because I can't imagine -- I
22 mean, Wells Fargo, if you take one of their ABA's and their
23 brokering, now you have -- you now just have violated the --

24 MR. MOWEN: Tim Mowen (phonetic), it depends. If
25 funding with house lines, selling is not really brokering

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38

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1 fund. Utilize their own warehouse lines they are quite
2 within.

3 MR. MALLARD: When they do one line?

4 MR. MOWEN: Yeah, you have to find out though, I
5 mean, are they funding to Wells Fargo warehouse lines, if
6 they are doing that, it is correct.

7 MR. MALLARD: I agree but again if you are under an
8 ABA, affiliated business, HUD mandates ten percent of your
9 business has to be brokered. The way I interpret that is
10 outside of my Wells Fargo capacity. Therefore, if that's a
11 HUD requirement, you are already going to assume that all it
12 takes is one ABA out there under Wells Fargo, brokering one
13 loan that should nullify the exemptions altogether.

14 I am making that point because I understand we are
15 going to have to fall under that licensing. I am not
16 fighting that, but I can see companies like Wells and things
17 like that fighting that exemption. I don't think it is going
18 to be right.

19 HEARING OFFICER WALTHER: I appreciate the comment.
20 I think we are straying a little bit, getting into the
21 licensing law. The definition of broker and banker company
22 has been in the law and it is still in the law.

23 The only issue AB 490 raises is that there are
24 companies that were previously exempted but for the exemption
25 would fall under one of those definitions and that's why it

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39

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1 is raising these issues about jurisdiction and licensing, but
2 it is really not -- it is really not part of the regulations
3 that we would adopt as a result of AB 490.

4 In the back.

5 MR. MOSHREFROONY: My name is Shawn Moshrefroony,
6 American Integrity.

7 As far as I have always understood a broker
8 institution that brokers a loan and a lender funds the loan.
9 A banker is an institution that funds their own loan and then
10 sells back correspondent thing.

11 Now, as far as Nevada was always concerned, again
12 that could be my lack of knowledge about the law here is that
13 you could have your own warehouse lines and fund your own
14 loans, therefore be a banker quote, unquote. But to get
15 exemptions, you had to be HUD approved and VA approved and
16 Fanny May approved, that was my understanding of it. The
17 reason I am bringing this up is because I am a Nevada broker,
18 licensed broker, but I am in the process of getting my own
19 warehouse line. Once I do that and that gives me the ability
20 to fund my own loans.

21 Now for the definition of what that lady said down
22 there, then I will become a banker; right?

23 MR. POWELL: Only if you do it 100 percent.

24 MR. MOSHREFROONY: Correct, correct, only if I fund
25 all my loans and on my own warehouse lines.

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40

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1 MR. POWELL: And you still have by their definition
2 of Fanny May, Freddy Mac, one of those two.

3 MR. MOSHREFROONY: To get exemptions. I am not
4 seeking exemptions and I still hold my mortgage broker
5 license. Do you understand what the confusion?

6 HEARING OFFICER WALTHER: I am not going to make a
7 ruling on your licensing issue, that is kind of my point is
8 that the licensing issues regardless of the effort to make
9 the law clear always seem to raise gray areas and that's why
10 there is a procedure in place for people to write a letter to
11 the agency, tell us what you are doing, and we will issue a
12 letter back in writing that you can rely on that says, you
13 know, you need this license or that license or no license at
14 all, and that's what I am telling people and we can't, you
15 know, we can't put to rest all of the possible issues today
16 relating to the scope of jurisdiction of these two chapters.

17 MR. MOSHREFROONY: The reason I brought it up is
18 that it just created the wording of that body of that memo
19 that sent out so it created confusion for me, and I wanted to
20 at least put it out there to consideration as to have some
21 sort of verbiage in the law distinguishing between exempt
22 broker or banker or just a banker. As far as I understand,
23 you got your warehouse loans and you fund your own loans you
24 are a bank.

25 HEARING OFFICER WALTHER: The definitions in the

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41

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1 statute are as clear as they are going to be, and there isn't
2 any proposal before us today to try to interpret them any
3 further. I could see there is a regulation that attempts to
4 define wholesale lending. You know, we could always look at
5 that and put a finer point on that, but that's not really an
6 issue we are discussing today. We are just discussing the
7 fact that there are going to be companies coming in for
8 licensing under one or of either 645B or 645E and how we are
9 going to try to accommodate them given the relatively short
10 time frame.

11 So unless anyone has anything specifically to that
12 issue, the transition to licensing on January 1st, I am going
13 to move on. Anyone else?

14 The next issue is examination procedures for escrow
15 agents and agencies, mortgage brokers and mortgage bankers.
16 I didn't really have much to say on this issue except to note
17 and it is available as a hand out that the financial
18 institution's division adopted a temporary regulation that
19 deals with the examination process and the procedure for
20 issuing file and reports and the ability to comment and
21 resolve differences about the report among other issues and I
22 invite people to comment on that temporary regulation and
23 whether it should be documented as a permanent regulation.
24 Other than that, I don't have any specific recommendations at
25 this time for the new commissioner about examination

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42

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1 procedures.

2 Anyone want to address the issue of examination
3 procedures?

4 UNIDENTIFIED SPEAKER: Is that temporary regulation
5 an NAC?

6 HEARING OFFICER WALTHER: Yes. Well, I don't know
7 if it is codified yet but it is effective. It is effective.

8 UNIDENTIFIED SPEAKER: I was wondering how I could
9 get a hold of that.

10 HEARING OFFICER WALTHER: It is available through
11 the legislative web site under the, there is a section in
12 their law library section that deals with, I forget what they
13 call it. It is not the NAC. It is like a register, a
14 regulation register, but I know the text of this is available
15 through their web site. And if anyone wants me to send them
16 one, just let me know, I would be happy to do that. But we
17 had some copies up front. I can make some more copies too.

18 If there aren't anymore comments on item six, we
19 will move to seven which is the assessment of cost for
20 services provided by a certified public accountant pursuant
21 to section 12 of AB 490.

22 This again is more of a housekeeping provision.
23 All companies regulated by the financial institution division
24 have been subject to an assessment to employ a CPA, to assist
25 in the supervising, supervisory process and background

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43

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1 process and having a similar regulation is just necessitated
2 by the fact that we are going to be a separate agency. I
3 think the intent or my recommendation at this point is to
4 adopt a regulation that just mirrors the existing regulation
5 as far as dividing that cost among the entities that are
6 subject to MLD and for your information, our proposed budget
7 does not have a hiring a CPA. It has a sharing the CPA
8 employed by financial institutions division and it being
9 billed for that work.

10 Any comments on the CPA assessment?

11 MR. VASSAR: Mark Vassar, Repo Mortgage. In the
12 past it has been shared equally by all of the licensees in
13 the state, has it not?

14 HEARING OFFICER WALTHER: Yes.

15 MR. VASSAR: So there is no provision for any type
16 of pro-ration based upon size or volume?

17 HEARING OFFICER WALTHER: No, not under current
18 regulation.

19 If there is no further comments, I will move on to
20 the next issue, the establishment of a rate for supervision
21 and examination of escrow agents and agencies, mortgage
22 brokers and mortgage bankers pursuant to section 15 of AB
23 490. Again, I think this is housekeeping. There is
24 currently a regulation, financial institutions regulation
25 that establishes that rate. There is no current intention to

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44

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1 raise or lower the rate. We simply are going to adopt the
2 regulation that makes that regulation apply to the new
3 agencies.

4 However, since this is a new agency and our expense
5 and revenue history is unknown, you know, there could come a
6 point in the future where we may need to re-examine that rate
7 given the work load of the staff and the just the activity
8 generated by the licensees under our jurisdiction, but right
9 now there is no change in the rate being proposed. It is
10 just we need a regulation that addresses that issue.

11 Any comments on that?

12 MS. BEACH: Do you know if you will have a budget
13 that we will be able to look at? It should be public
14 knowledge, public record?

15 HEARING OFFICER WALTHER: I think it is but, you
16 know, I am not really -- I am not really involved in the
17 budget. It is certainly going to be public.

18 MS. BEACH: Well, I just wonder because it is
19 always nice to know where the money is coming.

20 HEARING OFFICER WALTHER: Well, you can either come
21 down or tune in to the Interim Finance Committee next Tuesday
22 morning because it is going to be discussed there and that is
23 certainly very public. I think it is public but, you know, I
24 don't have a copy lying around.

25 MS. BEACH: Yeah, I was just wondering if there was

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45

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1 a budget after this is organized, will you have an operating
2 budget that will be available on the web site?

3 HEARING OFFICER WALTHER: You know, I don't believe
4 that is a normal practice, and I just don't know whether it
5 is public whether you want to go get it, you could, but I
6 don't think it is our intent to publish our budget. That's
7 not to say it is a secret, but it is just not something that,
8 you know, we intend to do at this point.

9 Any other comments on the examination rate?

10 All right. I will move on to the next issue which
11 is nine, assessment of the cost of services provided by the
12 Attorney General's office pursuant to section 16 of AB 490.
13 This generated quite a bit of discussion and it may today as
14 well. I -- because I watched AB 490 and some of the other
15 bills, I can tell you how this came about.

16 The financial institutions division had a bill to
17 become a truly self-funded agency this last session. And in
18 general terms the way their budget worked in the past is they
19 would receive a general fund appropriation at the beginning
20 of the fiscal year which was in a sense a loan from the
21 general fund which they repaid from their fee income which
22 they generated throughout the year.

23 And in these tight budget times, I believe it was
24 an idea originated in the legislature staff to eliminate that
25 commitment from the general fund to assist the general fund

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46

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1 and change the process of that financial institutions
2 division became a true self-funded agency that it had to set
3 up its cash flows and its fee arrangements and expenditures
4 so that it could -- it could support itself exclusively off
5 the fee income generated from the industry as it regulates
6 and not have to get a general fund appropriation at all.

7 As a part of -- during the process of the
8 legislative debate of that bill, as a matter I think of
9 unfortunate timing, the Attorney General's office issued its,
10 basically its bill for services its portion of agency budgets
11 that it was requiring agencies include in their budgets. So
12 the budget proposed for financial institutions division
13 suddenly had to be adjusted by a fairly substantial amount,
14 over \$300,000 for Attorney General's allocation and that just
15 had to be built into their budget.

16 So it generated a lot of discussion in the
17 legislative committees, and our financial institution was not
18 the only agency that was getting this kind of impact. There
19 are other self-funded agencies within our department and
20 other departments that are, you know, are very, very tight in
21 their funding and, you know, they had to really scramble to
22 deal with this Attorney General expense issue.

23 In any event when that became -- came under
24 scrutiny at the legislature, it was suggested that -- well,
25 there was a general discussion of how much do we use the

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47

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1 Attorney General and for what types of services and what kind
2 of cases and what industries are generating the most legal
3 cost and so on. And it was decided to amend that bill to
4 require our agency or the financial institutions division and
5 now Mortgage Lending as well to allocate that cost to the
6 industries that are generating the need for legal services.

7 And if you examine the bill, you will see that they
8 have just listed NRS chapters. They have provided some
9 flexibility in that wording as far as how to actually make
10 that allocation, but we don't have -- we have no control over
11 how they arrive at the figure. I guess we do have some
12 control over how much we rely on or how much we use those
13 services, but we are simply required by AB 490 to take the
14 bill we get for Attorney General services and allocate that
15 cost to the NRS chapters or the industry's represented by
16 those NRS chapters that generate that expense.

17 And what we have worked out tentatively with the
18 Attorney General's office is that, and the details need to be
19 further refined, but they are going to start keeping track of
20 their time relating to those NRS chapters and report to us on
21 a quarterly basis, and we will use that information to
22 basically divide the bill among the industries within our
23 jurisdiction.

24 Within those general parameters, you know, we have
25 got to flush out the details with some kind of a regulation,

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48

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1 but I am not sure how it will work, whether there will be a
2 one year assessment at the time of license renewal. That
3 seems to me that might be the simplest or whether there would
4 be a more frequent type of assessment. I welcome comments on
5 what you would like to see, but please understand that we
6 don't have a lot of flexibility on whether we do this. We
7 have been mandated to do it.

8 Any comments on that?

9 MS. BROMSTRON: Just a question, Cheryl Bromstrom
10 from the Nevada Consumer Financial Association. Within your
11 statutory authority or your regulatory authority, do you have
12 the ability to charge back those firms that are driving the
13 bulk of that cost?

14 HEARING OFFICER WALTHER: Yeah, there is language
15 in the bill that says whatever that amount is it is to be
16 offset by amounts we collect in specific cases, and there is
17 existing authority in our law to seek attorneys fees for
18 investigation of prosecution of violations, and we intend to
19 continue to use that authority.

20 However, as any practicing lawyer will tell you
21 that having that authority and the ability to collect on
22 those cost awards are two separate issues and sometimes we do
23 collect it. You know, in a settled case, we could very well
24 collect that and that will be coming right off the top of the
25 bill. But in other cases, we may have an attorney fee award

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49

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1 but we won't be able to collect it and therefore we won't be
2 able to factor in.

3 Mark?

4 MR. VASSAR: Mark Vassar with Repo Mortgage.
5 Penalties. Are the penalties applied towards these bills
6 too? In other words according to NRS, there are certain
7 penalties for certain type of violations, and are those with
8 for lack of a better word prosecution by the division or
9 prosecution by the Attorney General's office? In other
10 words, penalties something gone wrong, maximum 10,000 dollar
11 fine for certain types of penalties in the -- working without
12 a license?

13 HEARING OFFICER WALTHER: Penalties that are
14 established under the MLD statutes so they are imposed by
15 MLD. Whether they require the services of the Attorney
16 General just depends on the case.

17 MR. VASSAR: You are making the distinction right
18 now between penalties?

19 HEARING OFFICER WALTHER: Yeah.

20 MR. VASSAR: And attorney fees collect on
21 prosecutions?

22 HEARING OFFICER WALTHER: If that's your question
23 whether penalties we collect offset our attorney fee bill,
24 the answer is no.

25 MR. VASSAR: All right. I have another question

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50

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1 for you if you don't mind. You are the liaison for the
2 financial institution division with the Attorney General's
3 office, are you not, or you were in the past?

4 HEARING OFFICER WALTHER: I was employed by the
5 Attorney General's office in the past. I am not a liaison.

6 MR. VASSAR: For lack of a better word you were
7 employed by the Attorney General's office. Did you not work
8 with Scott Walsh?

9 HEARING OFFICER WALTHER: Yeah, I was a deputy
10 Attorney General assigned among others to financial
11 institution.

12 MR. VASSAR: Did you handle the bulk of or all of
13 any type of Attorney General work that had to do with
14 financial institution that resulted in that bill that they
15 got? Did you handle the majority of it? In other words, I
16 am trying to find out where all of these actions come from
17 because \$300,000 seems like a hell of a bill.

18 HEARING OFFICER WALTHER: I doubt -- I have been
19 gone now for over three years. So the way they do it is the
20 two year historical look back, so none of those hours
21 included my hours while I was there.

22 MR. VASSAR: There were prosecutions for like
23 global, like some of the things that have gone on in the
24 past, interstate?

25 HEARING OFFICER WALTHER: I can tell you that

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51

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1 looking, because I have been around the whole '90's, that I
2 was basically the attorney in the early '90's and now we
3 have, you know, as many as three attorneys working at least
4 part-time on this stuff or they do, the AG's office. So the
5 work load has increased over the last decade.

6 MR. VASSAR: In '99 there was a request from your
7 office to, during the interim session to add another attorney
8 which went down to Las Vegas. He was full-time down there
9 too.

10 HEARING OFFICER WALTHER: It did. AB 64
11 significantly increased the jurisdiction of the division and
12 the need for legal services.

13 MR. VASSAR: All right.

14 HEARING OFFICER WALTHER: Sorry.

15 MR. MOWEN: Tom Mowen, this kind of goes to what
16 Bob was saying in the back, the question of the fees are
17 going to get passed on to us as the entire industry
18 specifically, and yet there is no teeth from when we are
19 sitting here saying there are so many operators that aren't
20 following the rules that those few of us that are within the
21 guidelines make payroll tax and with the licensing and
22 govern, we are going to have all of our mortgage agents
23 licensed, what teeth are going to be in place to say, hey, we
24 have some rogue real estate agent that are operating out
25 here. We have unlicensed operators across the borders that

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52

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1 are closing loans. We have a number of mortgage officers
2 that don't keep their license because they keep rotating
3 through them, recruit them from the colleges and before their
4 year is up, they are gone.

5 HEARING OFFICER WALTHER: You know --

6 MR. MOWEN: And they get the majority of the
7 questions or complaints at the AG's office and those of us
8 that operate above the line pay the fees.

9 HEARING OFFICER WALTHER: I am not sure what you
10 are asking. If people are violating law, you know, that's
11 unfortunate. If you are asking us to more vigorously enforce
12 the licensing law so that activity ceases, I understand that
13 and request that the industry helps us from that doing by
14 providing us the information to follow through with it,
15 agreeing to be witnesses and so on that will allow us to
16 enforce the law.

17 MR. MOWEN: We need to have a platform to do so. I
18 mean, again, board of realators is somewhat a self-producing,
19 you know, they can bring it in front of the board. Any agent
20 can make a, you know, they know they have to be a licensed
21 agent and such. I am not necessarily looking for that type
22 of bureaucracy, but we do need to have some type of system to
23 be penalized from the AG's office for complaints against
24 people that have not been operating within the boundaries of
25 the law to begin with.

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53

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1 HEARING OFFICER WALTHER: Well, as we touched on
2 earlier, the existing practice as I understand it is to deal
3 with licensing issues administratively at least initially,
4 that it could be cease and desist letter. It is basically a
5 letter or an order saying we are aware that you may be
6 violating the licensing law, and you are ordered to cease it
7 and then warning them further consequences if they continue.

8 If it turns into a more serious situation or we get
9 evidence of the continuation of those practices, then it
10 becomes probably an administrative case that we need the
11 Attorney General's office to assist with, and it can go on to
12 be a judicial case too.

13 MR. ROYCE: John Royce, over the years, you know, I
14 probably turned to ten or 15 unlicensed people, I don't think
15 in one case have I ever gotten one feedback from the FIB
16 office as to what they did if anything. My perception is
17 that they probably did nothing and would certainly make us
18 feel better. I think if we were getting some feedback in the
19 form of blank carbon copy of cease and desist letter, and
20 obviously if we are going to be asked to pay for the Attorney
21 General's time in prosecuting these cases, it would be nice
22 to know what action is being taken prior to that Attorney
23 General being involved.

24 You know, over the years we have asked for formal
25 arrangements for feedback on disciplinary actions taken. The

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54

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1 State of California publishes a list of actions that they
2 have taken in enforcing the law that is something you ought
3 to consider.

4 HEARING OFFICER WALTHER: I appreciate the comment.
5 You know, we have an opportunity, we have a new agency and a
6 new commissioner that is coming on board to look at new ways
7 of addressing these issues, and that may be one where we use
8 our web site to post information that is public regarding
9 actions we are taking on unlicensed activity and maybe that
10 will generate enough of a stir or interest that people will
11 just elect not to expose themselves to the risk of being
12 listed up there. You know, I am not going to commit to that.
13 I am an acting commissioner but certainly the record is going
14 to reflect those types of suggestions and the new
15 commissioner will be considering them.

16 Did you have a comment?

17 MS. BEACH: Yeah, the question I have if this is
18 going to be self-funding, does that mean our licensing fee
19 will all go up next year?

20 HEARING OFFICER WALTHER: There is no intent to
21 raise fees from what they are now. The budget is being
22 presented next week is built on revenue estimates based on
23 the existing fee structure and the fee structure created by
24 AB 490 and projections of the number of licensees and agents.

25 MS. BEACH: One help may be if, you know, we can go

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55

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1 to the state web site and check out corporations, could we
2 also have that where all licensed acts are listed that they
3 are licensed so we would know without, you know, am I going
4 to have a form that I fill out that I say, well, so and so is
5 doing loans at Wells Fargo and turning, brokering them and
6 they have no license. If I can go to the web site and these
7 are the list of agents under this -- under this mortgage
8 company, that would be easy.

9 HEARING OFFICER WALTHER: Well, we are working on
10 that.

11 MS. BEACH: I was wondering if you would consider
12 that.

13 HEARING OFFICER WALTHER: I said in the beginning
14 we are going to unveil a web site in the next couple of
15 weeks.

16 MS. BEACH: I didn't know about that detail.

17 HEARING OFFICER WALTHER: It is going to have a
18 searchable data base that is going to be more or less live.
19 It is going to be current to the day with our data entry into
20 it, and it is going to let you search for individual agents
21 and licensees, and it is -- you are going to be able to look
22 at a broker, at a broker's offices and see all of the active
23 agents that we show for that office. So it should be easier
24 to police yourselves as far as determining whether you are
25 all up-to-date and current provided our data base is current

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56

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1 which may be another issue.

2 Cathie?

3 MS. JACKSON: Cathie Jackson, Mortgage Options.

4 Since we are going to be a self-funded agency, if there is
5 extra money, then why couldn't it go to support additional
6 attorneys fees or could have that come into play? If it is
7 self-funded like you told Mark, those fines wouldn't go to
8 pay attorneys fees, why couldn't that be the case if it is
9 self-funded and there is extra funds? Where would the extra
10 funds go?

11 I mean, the people that lobbied to pass the bill
12 lobbied for that because we believe our industry does need to
13 be cleaned up and that's why we pushed for what we pushed
14 for. So I would expect that the legal fees, until we get our
15 industry in a position that it should be in, could be
16 excessive for a while. So I think that we should look at if
17 there is extra money that maybe it should go to pay the AG's
18 office.

19 HEARING OFFICER WALTHER: Well, it is not really a
20 matter of whether there is extra money. The law provides
21 that we just will bill for whatever it takes to do those
22 services. I guess there is extra money in the sense that our
23 budget includes a reserve. As a self-funding agency, we need
24 to have a regional reserve to get us over cash flow
25 situations and, you know, unexpected unbudgeted expenses.

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57

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1 But, you know, the degree to which the agency or the
2 commissioner is proactive enforcing and incurring legal
3 expenses to enforce the law is a policy issue that for the
4 new commissioner and I.

5 It is our intent to encourage the new commissioner
6 to be more proactive in dealing with the industry, having
7 more of these types of discussions, making it easier through
8 the web site to just hear comments from licensees, and we
9 will try to get a sense from the people regulated, do they
10 want more enforcement, do they think we are spending too much
11 on attorneys fees, well, that kind of thing.

12 But at this point I am not concerned about the
13 funding. We are licensing a whole bunch of agents and
14 potentially a whole bunch of new brokers and companies, and
15 we expect that that is going to generate sufficient revenue
16 to, you know, amply support the division's operations.

17 On the other hand, we don't have any historical
18 experience, and I am going to tell the IFC Committee next
19 week that we are coming in lean in terms of the staff levels
20 for this agency and it is probably likely that we are going
21 to be coming back asking for more. But I am not at all
22 concerned about whether we are going to need to raise fees to
23 do that. I think there is going to be enough income from the
24 fees existing to do that.

25 But we, you know, among other things be looking at

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58

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1 whether we need support for the education process, possibly
2 support for further regulatory compliance positions so that
3 complaints can be handled, can be handled by a dedicated
4 person instead of handled, you know, as possible by existing
5 examiners and so on.

6 So, you know, we are kind of learning as we go
7 along but our intent anyway is to continue a dialogue in the
8 industry and get input on what the office should be doing and
9 where it should be concentrating its resources.

10 If we don't have anymore comments on the AG's
11 allocation, I will move on to the last issue. Possible
12 establishment of a system for the division of Mortgage
13 Lending to conduct business electronically over the internet
14 including the establishment of fees to conduct business in
15 that manner.

16 This is language that was basically tacked on to
17 the bill and it is nearly identical to language that was in
18 the real estate division's housekeeping bill. The real
19 estate division is in the process of obtaining a new
20 licensing system for its licensees. And one of the goals of
21 that new system is to be internet enabled so that licensees
22 can renew on line.

23 We didn't have any specific plans with this
24 language or this issue to do that but saw AB 490 as an
25 opportunity to put that enabling language in so that in the

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59

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1 future, we could offer more services over the internet as we
2 move in that direction, but frankly we are not there yet. We
3 are going to try to improve the friendliness of the web site,
4 but our plans are to do that within our existing resources.
5 We have no plans to put out a contract for a, you know,
6 license renewal system in the immediate future. But if we do
7 in the future or if the number is warranted it, we have a
8 mechanism to do that and, you know, if necessary to raise the
9 funds to do that for that purpose, we have that authority.

10 So there really isn't any specific proposal on the
11 table on that issue except to tell you that we are trying to
12 move in that direction, and I think you will see when we have
13 the new web site that we are making steps in that direction
14 but, you know, we are not going to be a D.M.V. or secretary
15 of state any time in the near future as far as taking credit
16 cards over the internet and so on.

17 Any comments on that? Mark.

18 MR. VASSAR: Doug, this is off the subject
19 slightly, internet lenders that are not licensed to do
20 business in the state, is there any plan for the future to
21 begin to cut some type of vehicle or some type of enforcement
22 or non licensed internet mortgage lenders?

23 HEARING OFFICER WALTHER: Well, this issue was
24 raised in the south and among all of the other issues, that
25 was the one that got reported on, so I am going to probably

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60

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1 be more careful in the south in responding to it.

2 Internet is, it is a means of communication, it is
3 only that. The activity that is represented by the internet
4 still takes place physically someplace and, you know, that's
5 really what state agencies do to my understanding. They
6 treat it like any other type of communication or
7 solicitation. It happens to be freely available to our
8 citizens, but there is all sorts of degrees of gray as far as
9 the originator of that message is contacts with our state.
10 It may be unintended to be viewed in our state completely.
11 It may be that the entity behind the message or solicitation
12 is specifically targeting our state. So all of those things
13 need to go in the mix in evaluating how serious of a
14 situation it is.

15 I would say that if there is information provided
16 that the internet is being used as a vehicle to solicit
17 business illegally in this state or in violation of our
18 licensing laws that at a minimum, we can send a cease and
19 desist order. And if we get into other means of trying to
20 advertise our licensing enforcement efforts, we can include
21 that within that process.

22 But as I said in the south, we have our hands full
23 dealing with licensing issues by real live people running
24 around our state and bricks and mortar buildings to spend a
25 whole bunch of time, you know, trying to figure out where,

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61

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1 you know, some wisp of digital media is being viewed in
2 somebody's home computer, and so we have to balance that
3 against our available resources.

4 And, you know, that's -- the best I can say I think
5 the issue of internet and licensing is something that is
6 eventually going to have to be addressed at the federal level
7 or in our state legislature because, you know, existing laws
8 just weren't drafted and budget funded to really contemplate
9 anything more than that as to the internet. And, you know,
10 absent a complaint of abuse from a specific situation, you
11 know, I don't know what more we can do to police the
12 internet. I don't think we want to have our staff just
13 surfing the internet all day looking for that. But if we
14 were provided with information about real live cases and
15 people that are affected through the internet, I think we
16 would investigate it like any other complaint. John?

17 MR. ROYCE: When will the new permanent
18 commissioner be appointed?

19 HEARING OFFICER WALTHER: The announcement closed
20 August 31st, and we are going to be setting up interviews in
21 the last couple of weeks of September, and I hope that we
22 will have an announcement early part of October. And my boss
23 Cindy Woodcliff was sitting next to me in the south and she
24 will tell you, I will just tell you myself now, I am very
25 anxious for the new commissioner to be appointed.

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62

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1 MR. ROYCE: I think you would be a great man for
2 the job.

3 HEARING OFFICER WALTHER: I appreciate that, but
4 this is like my third or fourth hat that I am wearing right
5 now, and my other ones are, you know, are getting dusty right
6 now, and I need to get back to some of the other things that
7 I am supposed to be doing.

8 MR. VASSAR: Can you tell us how many applicants
9 for the job?

10 HEARING OFFICER WALTHER: I don't know the exact
11 number, but I would say a dozen or more, and I think we have
12 some really good candidates on the list and, you know, we
13 will be going through that process, and we are very
14 optimistic about the change.

15 MR. VASSAR: Is it public process? At any point in
16 time, will the public be allowed to question the possible
17 regulators?

18 HEARING OFFICER WALTHER: The public part, there
19 was a public process and that was during the announcement
20 period. We would have considered any applicants recommended
21 by an organization or any information, but I guess we can
22 still consider information, but we actually have a regulation
23 in our department that allows organizations to submit names
24 of candidates for vacancies in our department. However, the
25 announcement period is expired at this point.

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63

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1 MR. VASSAR: My question to you is is there going
2 to be any public input during the interview process?

3 HEARING OFFICER WALTHER: There will not be. These
4 will be private interviews, personnel matters.

5 MR. VASSAR: We could get surprised is what you are
6 saying?

7 HEARING OFFICER WALTHER: I can't answer that. I
8 don't know what would surprise you.

9 Any other questions about any of the issues in the
10 workshop?

11 MR. SCHOCHBORGON: Wayne Schochborgon, Sierra
12 Coast. You were talking about the difference between
13 registering and licensing. You were saying there was going
14 to be \$185 to license. What else is going to be involved in
15 licensing an agent?

16 HEARING OFFICER WALTHER: Licensing an agent is
17 going to be like licensing a broker in a sense. There is
18 going to be a personal history questionnaire, a background
19 check by the gaming investigator we use for that purpose, and
20 we are going to require finger print cards from every
21 applicant. AB 490 authorizes it, and we intend to use that
22 if necessary to investigate the background of all applicants.

23 MR. POWELL: If necessary, Tom Powell.

24 UNIDENTIFIED SPEAKER: How many years do you go
25 back for background for employment and residence?

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64

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1 HEARING OFFICER WALTHER: You know, I don't know
2 the details. I think it goes back quite a ways, but there is
3 rules of thumb as far as whether we consider information
4 stale or not.

5 You know, generally ten years, an event ten years
6 ago starting to get stale especially if it is marginally
7 related to the qualifications, but if it is a 20 year old
8 conviction for mortgage fraud, we would still look at it
9 obviously. But it is intended to be a more vigorous
10 background check and we intend to do a more vigorous
11 background check.

12 The finger print cards are available from local law
13 enforcement. I think it cost five to \$10 per card to have
14 them finger print you, and then you just submit it with your
15 application.

16 Any other questions?

17 MS. JACKSON: Doug, Cathie Jackson, so on existing
18 licensees, are you going to go back and finger print them as
19 well or existing?

20 HEARING OFFICER WALTHER: Existing --

21 MS. JACKSON: Will that apply to the mortgage
22 brokers because they originate loans.

23 HEARING OFFICER WALTHER: No. Well --

24 MS. JACKSON: I am asking the question, a logical
25 question.

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65

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1 HEARING OFFICER WALTHER: An existing mortgage
2 broker would just be renewing an existing license, and it is
3 not going to apply to renewals. It is only going to apply to
4 new companies coming in for licensing and it will -- it will
5 apply it to all agents because all agents are going to have
6 to get that license initially before July 1st.

7 Anything else?

8 Well, thanks for coming, and we will be adjourned
9 then.

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1 STATE OF NEVADA,)
) ss.
2 CARSON CITY.)

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4 I, KATHY JACKSON, Nevada Certified Court Reporter
5 Number 402, do hereby certify:

6 That on Wednesday the 9th day of September, 2003,
7 at the Department of Business and Industry, Financial
8 Institutions Division, State of Nevada, 788 Fairview, Suite
9 300, Carson City, Nevada, I was present for the purpose of
10 reporting in verbatim stenotype notes the within proceedings;

11 That the foregoing transcript, consisting of pages
12 1 through 67, inclusive, is a full, true and correct
13 transcription of my stenotype notes of said proceedings.

14

15 Dated at Carson City, Nevada, this 19th day
16 of September, 2003.

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KATHY JACKSON, CCR, RPR
Nevada CCR #402

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